

2007

State of Utah v. Ronnie Todd May : Brief of Appellee

Utah Court of Appeals

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STATE OF UTAH

VS.

Defendant/Appellant.

CASE NO. 20070278-CA

AN APPEAL FROM A JURY FINDING OF GUILTY OF VIOLATION OF STALKING, A CLASS A MISDEMEANOR UNDER UTAH CODE ANNOTATED §76-5-106.5, IN THE SECOND JUDICIAL DISTRICT COURT, WEBER COUNTY, THE STATE OF UTAH, THE HONORABLE ERNIE W. JONES PRESIDING.

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UTAH APPELLATE COURTS

DEC 26 2007

IN THE UTAH COURT OF APPEALS

STATE OF UTAH

Plaintiff/Appellee,

vs.

RONNIE TODD MAY,

Defendant/Appellant.

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CASE NO. 20070278-CA

BRIEF OF APPELLEE

**AN APPEAL FROM A JURY FINDING OF GUILTY OF VIOLATION OF
STALKING, A CLASS A MISDEMEANOR UNDER UTAH CODE
ANNOTATED §76-5-106.5, IN THE SECOND JUDICIAL DISTRICT
COURT, WEBER COUNTY, THE STATE OF UTAH, THE HONORABLE
ERNIE W. JONES PRESIDING.**

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH,

Plaintiff/Appellee,

vs.

RONNIE TODD MAY,

Defendant/Appellant.

CASE NO. 20070278-CA

BRIEF OF APPELLEE

STATEMENT OF JURISDICTION

Defendant appeals from his conviction on one count of stalking, a class A misdemeanor in violation of Utah Code Ann. §76-5-106.5. The Utah Court of Appeals has appellate jurisdiction over this matter pursuant to Utah Code Ann. §78-2a-3(2)(e).

ISSUES ON APPEAL AND STANDARD OF REVIEW

- I. **Did the trial court err in excluding evidence during the Defendant's case-in-chief from the related stalking injunction case?**

“Although the admission or exclusion of evidence is a question of law, [this Court] review[s] a trial court's decision to admit or exclude specific evidence for an abuse of discretion.” State v. Cruz-Meza, 2003 UT 32 ¶ 8, 76 P.3d 1165.

- II. **Did a note in the docket in the related civil stalking injunction constitute a court order by that trial court; if it did, were the court's orders vague and unclear to the point that the Defendant's Due Process rights violated in that**

he was not notified of proscribed conduct?

Though underlying factual matters are within the discretion of the trial court, whether a given set of facts gives rise to a constitutional violation is a matter of law.”

State v. Maas, 991 P.2d 1108, 1111 (Utah Ct. App. 1999). “Constitutional issues, including . . . due process, are questions of law which we review for correctness.” State v. Marshall, 81 P.3d 775, 778 (Utah Ct. App. 2003)(internal citations omitted).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Copies of pertinent constitutional provisions, statutes and rules, including: U.S. Const. amends. V and XIV, Utah R. Evid. 401, 403, 801, 803, 901 and 902, and Utah R. Jud. Admin. 4-202:01 are included in addendum A.

STATEMENT OF RELEVANT FACTS

The Defendant in this case is the ex-husband of the victim, Tammy May in this case. On March 19, 2003, a civil stalking injunction was entered by Judge Lyon, both the Defendant/Respondent and the victim/Petitioner were present at the hearing. The stalking injunction enjoined the Defendant from stalking the victim, contacting the victim and enumerated persons and staying away from places frequented by the victim. See Addendum B. On March 31, 2003 without the help of an attorney, the Defendant filed a document entitled “Respondent’s Appeal.” Addendum C. The docket of the case shows that the file was sent up to Judge Lyon for review. Id. On April 3, 2003, a note in the docket states,

Called respondent re his “appeal filed 3/31/03 - he stated that it is an objection to the commissioner’s recommendation, and that additional motions for change of venue will be filed. Per Judge Lyon, hold until further motions are filed.

Id. On April 10, 2003, the Defendant filed a document entitled “Petition for Recluse [sic] of Trial Judge and Reconsideration of Recommendations.” Id. On April 28, 2003, another case note states that “per Judge West” the Defendant’s April 10th petition was insufficient and that the Defendant needed to submit proper paperwork. Id. The next relevant date in the civil stalking injunction file was on February 11, 2006 when the case was dismissed by Judge Lyon. Id.

The case before this Court, stems from several incidents in November of 2005. The first, on November 17, involved the Defendant driving by the victim’s home, slowing down and telling her that he “needed to talk to her” (R. 100/55). Then on November 24, the Defendant left a voice message on the victim’s phone, telling her again that “he needed to talk to her.” The final incident occurred on November 27, when the Defendant contacted the victim’s sister-in-law Darlene Sewell, also a protected person under the stalking order, leaving a message with her that he wanted to talk to Tammy (R. 100/67).

A jury trial was held on January 11, 2007. The State presented evidence of the existence of the stalking injunction and the violations of the injunction. After the State rested, Defense counsel asked for the Court to dismiss the case based on lack of notice of the stalking injunction (R. 100/85). His primary basis for lack of notice was the April 3rd docket entry, which stated, “Per Judge Lyon, hold until further motions are filed” Id.

As part of that discussion Judge Jones asked the Defense how he could even consider the entry because it had not been admitted into evidence (R. 100/88). The Defense responded by asking the Court to take judicial notice of that entry and the other entries dealing with the Defendant's "appeal" in the stalking injunction case (R. 100/88-89). Judge Jones expressed reluctance in admitting the April 3rd entry because of its lack of clarity and because nothing in the entry suggested that the "hold" was expressed to the Defendant (R. 100/89-90). In response, the Defense made a motion, claiming that the April 3rd entry was vague, so his client's due process rights had been violated (R. 100/90).

Additionally, the Defense made another motion that the entry could be admitted because it was an official court record (R. 100/91). The trial court expressed a concern about the meaning of the entry and the relevance the entry had on what the Defendant believed about the injunction. *Id.* The Defense responded that at least the jury should know that the Defendant filed an appeal of the injunction (R. 100/93). On that point, the trial court ruled excluded even admitting that the Defendant filed an "appeal" because it would just confuse the jury (R. 100/96). Following, the court's ruling, the Defense rested without putting on any evidence in their case-in-chief. *Id.*

SUMMARY OF ARGUMENTS

Issue I. Appellant claims that his due process rights were violated because the trial court excluded a court docket entry and did not allow the Defendant to argue about it in closing arguments. The real issue is whether it was proper for the court to exclude the

court docket entry as evidence during the trial. The court docket entry was hearsay and it does not fit into any of the recognized hearsay exceptions because it is only a note in the docket. It was not an order issued by the court, neither is it a clear statement of anything that could provide a defense for the Defendant in this case. As the trial court properly ruled, admitting the speculative entry would only confuse the jury. Because the entry was inadmissible, the court properly ordered that the Defendant could not bring it up in his closing argument. Alternatively, even if error did occur, Defendant's claims fail because he has not shown prejudice.

Issue II. Appellant claims that his due process rights were violated by a vague order by Judge Lyon in the civil protective order case. However, the Defendant fails to show how the entry could be interpreted as any kind of order. The docket entry was never signed by Judge Lyon and there is no evidence that the instruction in the entry to "hold" had anything to do with the protective order or was even conveyed to the Defendant. Because no order was ever made by Judge Lyon, the Defendant's due process rights were not violated.

ARGUMENT

I. THE DEFENDANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED WHEN THE TRIAL JUDGE EXCLUDED EVIDENCE OF A DOCKET ENTRY FROM THE PREVIOUS PROTECTIVE ORDER CASE.

Defendant claims that his due process rights were violated because the trial court did not allow him to submit reasonable evidence at trial. This Court should reject

Defendant's claim because Defendant's evidence was inadmissible. Alternatively, Defendant was not prejudiced by the excluded testimony, even if it was erroneously admitted.

A. Defendant's excluded evidence was inadmissible.

A defendant is entitled to have his theory of the case presented to the jury in a clear and understandable way; however, he is limited in that he may only discuss such a theory if there is any basis in the evidence to support that theory. State v. Brown, 607 P.2d 261, 265 (Utah 1980)(emphasis added). In order to have the jury instructed on an item or for a defendant to present a theory in argument, it must "comport with the facts presented." Salt Lake City v. Smoot, 921 P.2d 1003, 1008 (Utah Ct. App. 1996). An item can only be put into evidence if it complies with the Rules of Evidence and is admitted by the Court.

A documentary item of evidence must meet three basic rules of evidence for it to be admissible. First, the item must be relevant to the issues in a case. See Utah Rules of Evidence 401. Second, evidentiary foundation or authentication for the document must be established. Id. 901-902. Third, the item cannot be hearsay, unless it falls into one of the hearsay exceptions. Id. 801 to 807.

Relevant evidence is "evidence having any tendency to make existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Id. 401. The trial court is given considerable discretion in deciding whether or not evidence is relevant. Bambrough v. Bethers, 552

P.2d 1286, 1290 (Utah 1976). The trial court's decision to exclude evidence will not be reversed unless it is shown that its discretion has been abused. Gorostieta v. Parkinson, 17 P.3d 1110, 1114 (Utah 2000).

The mysterious docket entry that the Defendant asked to be admitted into evidence was not relevant to Defendant's guilt or innocence in his case. The Defendant claims that this entry shows that he did not know that the stalking injunction was still in effect. The entry by itself does not reveal in any fashion that the stalking injunction had been stayed by Judge Lyon. It does not reveal what Judge Lyon's request to "hold" means. Further, it does not indicate that Judge Lyon's request to "hold" was conveyed to the Defendant. Defendant's claim that the "hold" put the stalking injunction on hold is without basis in law or reason. If anything this docket entry is an internal note used by the court to keep track of the file because of the Defendant's "appeal" in that case. Even if the entry were relevant, admitting the entry by itself as the Defendant tried to do in the trial without any explanatory testimony by the note's author, by Judge Lyon or by the Defendant would serve only to confuse or mislead the jury. Such confusion would make the evidence inadmissible as a violation of Utah Rules of Evidence 403.

Another requirement to admit a document or item is that proper evidentiary foundation or authentication must be provided for the evidence in order for it to be admitted. Utah R. Evid. 901-902. Certain documents including court documents may be self-authenticating, meaning that extrinsic evidence of authenticity as a condition

precedent to admissibility is not required. Id. 902.

In this case, the record is bereft of what exactly, the Defendant tried to admit into evidence. It appears that he tried first just to admit the April 3rd docket entry and then he attempted to admit the entire docket of the stalking injunction, including the fact that the Defendant appealed the stalking injunction. Arguably, these items may fit under Utah R. Evid. 902(4) as a copy of an official record or report or entry therein. In the trial, the State did not object to the admission of the items because they were not what they appeared to be, but rather on the relevance of the items and possible problems that could be caused if they were admitted and put before the jury.

One question that was only hinted to in the record, was whether the April 3rd docket entry is an official court record. In the Rules of Judicial Administration, a court record is defined as “a record prepared, owned, received, or retained by a court or administrative office of the courts.” 4-202.01(2). Record is defined as “books, letters, documents, papers . . . data or other materials, regardless of form or characteristics, that are reproducible.” Id. 4-202.01(3). Record does not mean “drafts, calendars, notes or similar materials prepared for the originator’s personal use or for the personal use of an individual for whom the originator works.” Id. 4-202.01(3). From the statements in the record and a perusal of the docket, the April 3rd docket note may fit as a “note” that is not defined as a record, meaning it may not be self-authenticating without some extrinsic evidence. Again, all of this conjecture could have been cleared up if the Defendant had

called somebody with knowledge about the circumstances and meaning of the docket entry. His failure to do so, does not allow the evidence to be admitted.

The final requirement for admissible evidence is that the evidence cannot be hearsay, unless it falls within one of the enumerated exceptions. Utah R. Evid. 801-807. Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted. Id. 801(c). The assumed possible exceptions to hearsay for the April 3rd docket note and the filing of Defendant's "appeal" are found under Utah R. Evid. 803(6) or 803(8). Utah R. Evid. 803(6) allows for records to be admitted "if kept in the course of a regularly conducted business activity" as shown by

the custodian or other qualified witness or by certification that complies with . . . a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

Utah R. Evid. 803(8), which is entitled, "Public records and reports," allows for "records, reports, statements or data compilations, in any form, of public offices or agencies" to come in as a hearsay exception if certain conditions exist, "unless the sources of information or other circumstances indicate lack of trustworthiness." The requirement of trustworthiness coincides with the U.S. Supreme Court requirement that hearsay statements must have "sufficient indicia of reliability" to be admissible. Idaho v. Wright, 497 U.S. 805, 820 (1990).

Looking just at whether these notes indicate a lack of trustworthiness, it is clear

that the April 3rd note by itself is vague. The meaning of the “hold” and the circumstances and effect of said hold are all unknown without resorting to another source. Further, the note by itself holds no relevance to the Defendant’s guilt and innocence. As the Utah Supreme Court has stated, “The hearsay rule is the key procedural device for implementing the right of confrontation and the values it safeguards. State v. Bullock, 791 P.2d 155, 165 (Utah 1989). It protects both sides from bringing in unreliable evidence (emphasis added). If the trial court had allowed the Defendant to place into evidence the filing of the appeal and the court note alone; the State would be deprived of the opportunity to make sense of the evidence or to challenge any implication it may have on the Defendant’s charge. By placing those items into evidence, the trial court would have skirted the entire purpose of the hearsay rule because of the inherent trustworthiness deficiencies in those items.

Utah law has not addressed the admissibility or reliability of notes in a court’s docket; however, a Court of Appeals in Texas questioned the use of docket notes as evidence for an appellate court to know what happened in a trial court. It observed that docket notes are usually unreliable since “they are only made for the clerk’s convenience.” State Farm Fire & Casualty Co. v. Reed, 826 S.W.2d 659, 661 (Tex. App. 1992). The court further expressed concern about reviewing notes in a docket as if they were an order from the court. Id.

In conclusion, the trial court did not err in excluding the docket note and “appeal”

filed by the Defendant in the civil stalking injunction case. The evidence of those by themselves were not relevant, neither did they possess the necessary indicia of reliability necessary to be admissible. Because the evidence was properly excluded, the Defendant's due process rights were not violated.

B. Even if error did occur, Defendant's claim fails because he has not demonstrated prejudice.

Even assuming that the trial court did err in excluding the docket note and "appeal" filing, Defendant's claim nonetheless fails because he has not shown he suffered any prejudice by that error. To succeed on an evidentiary claim on appeal, defendant must show not only that an error occurred, but that the error was prejudicial. See State v. Vargas, 20.P3d 271 (Utah 2001). Thus, in addition to showing error, Defendant must show that, "absent the error, there is a reasonable likelihood that there would have been a more favorable result for the defendant." State v. Kohl, 999 P. 2d 7, 12 (Utah 2000).

The Defendant claims that by bringing in the court note and fact he appealed the stalking injunction in the previous case, he could have argued that he lacked the necessary mens rea for violating the stalking injunction. Defendant makes a leap in supposing that vague note in the file, which states "per Judge Lyon, hold until further motions are filed" and the Defendant's "appeal" could be construed to mean that the stalking injunction was lifted. Factors such as whether the Defendant actually knew of the note in the file and the syntactical stretching that must take place to lead to the absurd result of the injunction

being lifted, show the admission of those items would not have caused a more favorable result for the defendant.

II. THE DEFENDANT'S DUE PROCESS RIGHT WERE NOT VIOLATED BECAUSE THE TRIAL COURT NEVER MADE AN ORDER.

The Defendant claims first that the note in the docket from April 3rd is somehow akin to a statute or lawful order because if the Defendant failed to obey the judge's order, he could be sent to jail. Hansen v. Eyre, 116 P.3d 290, 292-293 (Utah 2005). He then asserts that such order was so vague that his due process rights were violated.

The first question raised by Defendant's claim is whether the April 3rd docket note can be construed as an order that the Defendant is expected to abide by. A typical court order involves a document or in the very least a definitive order in the presence of all the parties involved. It usually is done when all interested parties are invited to participate and not done over the phone. The problem with the Defendant's claim is threefold. First, the court must somehow determine that the docket note constitutes a court order. Defendant's only evidence is the language from the docket. No other evidence of an order or even a conveyance of that order to the Defendant was provided at the time of trial or since. The Defendant's claim that this note is somehow an order has no basis in fact or reality.

Second, to suppose that trial court judge would lightly dismiss or throw out a civil stalking injunction by telephone is gigantic leap that was not supported by any of the


evidence proffered at trial or by the language in the docket note. Finally, the State does not disagree that the note by itself without any explanatory testimony is vague and speculative. It is for these very reasons that the trial court excluded the note and any mention of the Defendant's appeal. The rules of evidence explicitly allow trial courts to exclude evidence when its probative value is "substantially outweighed by the danger of . . . confusion of the issues . . . or misleading the jury." Utah R. Evid. 403; Diversified Holdings, L.C. v. Turner, 63 P.3d 686, 701 (Utah 2002). Had the trial court allowed Defendant's evidence in, its speculative nature would have likely confused the issues and mislead the jury. The court is the gatekeeper with a duty to not allow spurious and speculative evidence into its walls just because that is all a defendant can come up with.

The Court properly excluded the docket note and evidence of the Defendant's appeal because of their speculative nature. It is for these same reasons that Defendant's due process claim for vagueness was not violated.

CONCLUSION

Based on the foregoing, the appellee asks this Court to affirm the jury's finding the Appellant guilty of stalking, a class A misdemeanor under Utah Code Ann. § 76-5-106.5.

DATED this 26th day of December, 2007.


Teral L. Tree
Attorney for Appellee

CERTIFICATE OF MAILING

I certify that on the 26th day of December, 2007, I caused to be mailed, by U.S. Mail, postage prepaid, two accurate copies of this **BRIEF OF APPELLEE** to Randall W. Richards, 2568 Washington Boulevard, Suite. 200, Ogden, Utah 84401.

A handwritten signature in black ink, appearing to be "Randall W. Richards", written over a horizontal line.

ADDENDUM A

UNITED STATES CONSTITUTION

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

UTAH RULES OF EVIDENCE

Rule 401. Definition of "relevant evidence."

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 801. Definitions.

The following definitions apply under this article:

- (a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
- (b) Declarant. A "declarant" is a person who makes a statement.
- (c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

Rule 803. Hearsay exceptions; availability of declarant immaterial.

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(6) Records of regularly conducted activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (A) the activities of the office or agency, or (B) matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal cases matters observed by police officers and other law enforcement personnel, or (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

Rule 901. Requirement of authentication or identification.

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

Rule 902 . Self-authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district, commonwealth, territory, or insular possession thereof, or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof, and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear the signature in the official capacity of an officer or employee of any entity included in Paragraph (1) hereof, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with Paragraph (1), (2), or (3) of this rule or complying with any law of the United States or of this state.

UTAH RULES OF JUDICIAL ADMINISTRATION

Rule 4-202.01.

Definitions.

Intent:

To provide a uniform definition for special terms.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

As used in these rules:

- (1) "Access" means to inspect and obtain a copy.
- (2) "Court record" means a record prepared, owned, received, or retained by a court or the administrative office of the courts.
- (3) "Record" means books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, data or other materials, regardless of form or characteristics, that are reproducible.
- (4) "Record" does not mean any of the following unless received into evidence:
 - (4)(A) drafts, calendars, notes or similar materials prepared for the originator's personal use or for the personal use of an individual for whom the originator works;
 - (4)(B) materials legally owned by an individual in the individual's private capacity;
 - (4)(C) materials to which access is limited by the laws of copyright or patent unless the copyright or patent is owned by the courts;
 - (4)(D) proprietary software or software developed or purchased by or for the courts for its own use;
 - (4)(E) junk mail or commercial publications received by the courts or an official or employee of the courts; or
 - (4)(F) materials contained in the collection of libraries open to the public.

ADDENDUM B

Petitioner's Name

Address (may be omitted for privacy)

City, State, Zip

Telephone (may be omitted for privacy)

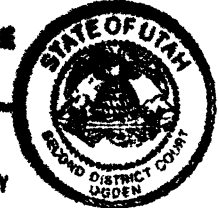
STATE OF UTAH
COUNTY OF WEBER } ss

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE
ORIGINAL ON FILE IN MY OFFICE.

DATED THIS 21st DAY OF Dec. 2002

CLERK OF THE COURT

BY Jessie W. Johnson DEPUTY



IN THE SECOND JUDICIAL DISTRICT COURT
WEBER COUNTY, STATE OF UTAH

MAR 19 2003

Sammy May

Petitioner,

vs.

Todd May

Respondent.

CIVIL STALKING INJUNCTION

Case No. 030901057

Judge

Attention: This is an official court order. If you disobey this order, the court may find you in contempt. You may also be arrested and prosecuted for the crime of stalking and any other crime you may have committed in disobeying this order.

The court has reviewed Petitioner's Petition for Stalking Injunction and a hearing was held on 3-19 2003. The court has determined that there is reason to believe that an offense of stalking has occurred and the Respondent is the stalker,

Pursuant to Utah Code Ann. § 77-3a-101, the court therefore orders as follows:

1. The Respondent is enjoined from stalking Petitioner. (The Utah Code definition of

stalking is attached to this order.)

2. Respondent is enjoined from going near the following addresses frequented by

Petitioner:

Residence: 1406 - 8th St., Ogden, Utah

Work: Smith's (North Ogden); Pete Mart (Riverdale)

School: _____

Other: Wherever she may reside or be employed

3. Respondent is restrained from contacting the Petitioner, directly or indirectly, through any form of communication including written, oral, or electronic means, and the

Respondent is restrained from contacting the following persons:

- Stacey Stewart, Brad Verwallen, Marilyn
Sharkey, Darlene Sewell

4. Other:

5. This order supersedes any ex parte injunction previously issued in this matter.

DATED this 19 day of March 2003.

Scott M. Hadley
Commissioner
3-19-03

Michael D. H.
District Court Judge

Serve Respondent at:

ADDENDUM C

SECOND DISTRICT COURT - OGDEN
WEBER COUNTY, STATE OF UTAH

TAMMY MAY vs. TODD MAY

CASE NUMBER 030901057 Civil Stalking

CURRENT ASSIGNED JUDGE
MICHAEL D LYON

CURRENT ASSIGNED COMMISSIONER
SCOTT M HADLEY

PARTIES

Plaintiff - TAMMY MAY

Defendant - TODD MAY

Represented by: PATRICK L KELLEY

Also Known As - R TODD MAY

Also Known As - RONNIE MAY

ACCOUNT SUMMARY

| | | |
|---------------|--------------|-------|
| TOTAL REVENUE | Amount Due: | 21.00 |
| | Amount Paid: | 21.00 |
| | Credit: | 0.00 |
| | Balance: | 0.00 |

REVENUE DETAIL - TYPE: COPY FEE

| | | |
|--|----------------|------|
| | Amount Due: | 0.25 |
| | Amount Paid: | 0.25 |
| | Amount Credit: | 0.00 |
| | Balance: | 0.00 |

REVENUE DETAIL - TYPE: COPY FEE

| | | |
|--|----------------|------|
| | Amount Due: | 0.75 |
| | Amount Paid: | 0.75 |
| | Amount Credit: | 0.00 |
| | Balance: | 0.00 |

REVENUE DETAIL - TYPE: FLOPPY DISK COPY

| | | |
|--|----------------|-------|
| | Amount Due: | 10.00 |
| | Amount Paid: | 10.00 |
| | Amount Credit: | 0.00 |
| | Balance: | 0.00 |

CASE NUMBER 030901057 Civil Stalking

REVENUE DETAIL - TYPE: AUDIO TAPE COPY

| | |
|----------------|-------|
| Amount Due: | 10.00 |
| Amount Paid: | 10.00 |
| Amount Credit: | 0.00 |
| Balance: | 0.00 |

CASE NOTE

PROCEEDINGS

02-06-03 Case filed
02-06-03 Judge MICHAEL D LYON assigned.
02-06-03 Judge SCOTT M HADLEY assigned.
02-06-03 Filed: PETITION FOR CIVIL STALKING INJUNCTION
02-06-03 Filed order: EX PARTE CIVIL STALKING INJUNCTION
Judge PARLEY R BALDWIN
Signed February 06, 2003
02-06-03 Filed: INFORMATION SHEET
02-06-03 Note: EX PARTE CIVIL STALKING INJUNCTION ENTERED IN DVN
02-06-03 Tracking started for Stalking 90 Days. Review date May 06, 2003.
02-11-03 Case Disposition is Dismissed
Disposition Judge is MICHAEL D LYON
02-12-03 Filed: RESPONDENT'S REQUEST FOR HEARING
02-12-03 Filed: NOTICE OF HEARING
02-12-03 CIVIL STALKING INJUNCTION HRG scheduled on February 24, 2003 at 09:00 AM in 2nd Floor Northeast with Judge HADLEY.
02-12-03 Filed: CERTIFICATE OF MAILING OF REQUEST & NOTICE OF HEARING TO PETITIONER AND HAND DELIVERED A COPY TO RESPONDENT
02-18-03 Filed return: CIVIL STALKING INJUNCTION
Party Served: MAY, TODD
Service Type: Personal
Service Date: February 11, 2003
02-24-03 Minute Entry - Minutes for CIVIL STALKING INJUNCTION
Commissioner: SCOTT M. HADLEY
Clerk: paulinec
PRESENT

Plaintiff(s): TAMMY MAY
Defendant(s): TODD MAY
Defendant's Attorney(s): PATRICK KELLEY
Audio
Tape Number: 5069 Tape Count: 5575-

HEARING

CASE NUMBER 030901057 Civil Stalking

Matter comes before the court for civil stalking injunction with petitioner appearing without counsel. Respondent is present and represented by Patrick Kelley.

Court grants the respondent's request to continue the matter.

Respondent to pay the witness fees.

Matter to be set for an afternoon hearing of at least 1 1/2 hour hearing.

Matter to be set with Patty.

***Tape 5069 Digit 5575-5865, Tape 5070 Digit 478-860

02-24-03 CIVIL STALKING HEARING scheduled on March 19, 2003 at 02:00 PM in 2nd Floor Northeast with Judge HADLEY.

02-24-03 Notice - NOTICE for Case 030901057 ID 8085787

CIVIL STALKING HEARING is scheduled.

Date: 03/19/2003

Time: 02:00 p.m.

Location: 2nd Floor Northeast
Second District Court
2525 Grant Avenue
Ogden, UT 84401

Before Commissioner: SCOTT M. HADLEY

02-24-03 PROTECTIVE ORDER scheduled on March 19, 2003 at 02:00 PM in 2nd Floor Northeast with Judge HADLEY.

02-25-03 Filed: Witness list for Tammy May

03-19-03 Minute Entry - Minutes for CIVIL STALKING HEARING

Commissioner: SCOTT M HADLEY

Clerk: paulinec

PRESENT

Plaintiff(s): TAMMY MAY

Defendant(s): TODD MAY

Audio

Tape Number: 5092 Tape Count: 3248-

HEARING

Matter comes before the court for civil stalking with petitioner and respondent appearing without counsel.

The stalking injunction is granted.

***Tape 5092 Digit 3248-6934, Tape 5093 digit 1-2159

03-19-03 Filed order: Civil Stalking Injunction & acceptance of service
Judge MICHAEL D LYON
Signed March 19, 2003

03-19-03 Case Disposition is Granted

Disposition Judge is MICHAEL D LYON

03-31-03 Fee Account created Total Due: 0.25

03-31-03 COPY FEE Payment Received: 0.25

3-31-03 Note: Appeal and file sent up to Judge Lyon for review.
3-31-03 Filed: RESPONDENT'S APPEAL
4-03-03 Note: Called respondent re his "appeal" filed 3/31/03 - he stated that it is an objection to the commissioner's recommendation, and that additional motions for change of venue will be filed. Per Judge Lyon, hold until further motions are filed.
14-10-03 Filed: PETITION FOR RECLUSE OF TRIAL JUDGE AND RECONSIDERATION OF RECOMMENDATIONS
14-23-03 Note: Sent File/Order for Recluse of Trial Judge and reconsideration of Comm Recomm to Trina for sched.
04-25-03 Note: File sent to WBW. Order for recusal is missing a motion, mentions a request for hearing - but no formal request is attached; mentions a change of venue but no motion/order for change of venue.
04-28-03 Note: Per Judge West, petition for recusal is insufficient. Respondent to submit proper paperwork for change of venue, req. for hearing and/or recusal. Petition placed in file.
05-22-03 Fee Account created Total Due: 0.75
05-22-03 COPY FEE Payment Received: 0.75
08-26-03 Tracking ended for Stalking 90 Days.
08-26-03 Tracking started for Stalking 3 Years. Review date May 01, 2006.
02-13-04 Tracking ended for Stalking 3 Years.
02-13-04 Tracking started for Stalking 3 Years. Review date Feb 11, 2006.
02-11-06 Case Disposition is Dismissed
Disposition Judge is MICHAEL D LYON
03-30-06 Tracking ended for Stalking 3 Years.
12-22-06 Fee Account created Total Due: 10.00
12-22-06 FLOPPY DISK COPY Payment Received: 10.00
Note: 20.00 cash tendered. 10.00 change given.
12-22-06 Note: Audiotape copy made 12-22-06 of hearing held 2-24-03 for Todd May. Prepaid. Mr. May was called and told tape was ready to pick up.
01-03-07 Fee Account created Total Due: 10.00
01-03-07 AUDIO TAPE COPY Payment Received: 10.00
01-03-07 Note: Copied cassette tape of 3-19-03 hearing for Mr. May. He picked the cassette up.